

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 ROBERT E. DUGDALE
 Assistant United States Attorney
 3 Chief, Criminal Division
 CHRISTINA T. SHAY (Cal. State Bar No.: 264528)
 4 Assistant United States Attorney
 General Crimes Section
 5 1200 United States Courthouse
 312 North Spring Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-0757
 7 Facsimile: (213) 894-0141
 E-mail: christina.shay@usdoj.gov
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Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12

13 UNITED STATES OF AMERICA,) CR No. 12-649-DMG
)
14 Plaintiff,) <u>PLEA AGREEMENT FOR DEFENDANT</u>
) <u>AURELIO PATINO</u>
15 v.)
)
16 ERIC MORENO NAVARRO, and)
17 AURELIO PATINO,)
)
18 Defendants.)
)
)

19
 20 1. This constitutes the plea agreement between AURELIO
 21 PATINO ("defendant") and the United States Attorney's Office for
 22 the Central District of California ("the USAO") in the
 23 above-captioned case. This agreement is limited to the USAO and
 24 cannot bind any other federal, state, local, or foreign
 25 prosecuting, enforcement, administrative, or regulatory
 26 authorities.
 27
 28

DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:

a) At the earliest opportunity requested by the USAO and provided by the Court, appear and plead guilty to count one of the indictment in United States v. Navarro, et al., CR No. 12-649-DMG, which charges defendant with Felon in Possession of a Firearm in violation of Title 18, United States Code, Section 922(g)(1).

b) Not contest facts agreed to in this agreement.

c) Abide by all agreements regarding sentencing contained in this agreement.

d) Appear for all court appearances, surrender as ordered for service of sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter.

e) Not commit any crime; however, offenses that would be excluded for sentencing purposes under United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not within the scope of this agreement.

f) Be truthful at all times with Pretrial Services, the United States Probation Office, and the Court.

g) Pay the applicable special assessment at or before the time of sentencing unless defendant lacks the ability to pay and prior to sentencing submits a completed financial statement on a form to be provided by the USAO.

THE USAO'S OBLIGATIONS

3. The USAO agrees to:

a) Not contest facts agreed to in this agreement.

1 b) Abide by all agreements regarding sentencing
2 contained in this agreement.

3 c) At the time of sentencing, provided that defendant
4 demonstrates an acceptance of responsibility for the offense up
5 to and including the time of sentencing, recommend a two-level
6 reduction in the applicable Sentencing Guidelines offense level,
7 pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary,
8 move for an additional one-level reduction if available under
9 that section.

10 d) Recommend that defendant be sentenced to a term of
11 imprisonment no higher than the low end of the applicable
12 Sentencing Guidelines range, provided that the offense level used
13 by the Court to determine that range is 12 or higher and provided
14 that the Court does not depart downward in offense level or
15 criminal history category. For purposes of this agreement, the
16 low end of the Sentencing Guidelines range is that defined by the
17 Sentencing Table in U.S.S.G. Chapter 5, Part A.

18 NATURE OF THE OFFENSE

19 4. Defendant understands that for defendant to be guilty of
20 the crime charged in count one of the indictment, that is, Felon
21 in Possession of a Firearm, in violation of Title 18, United
22 States Code, Section 922(g)(1), the following must be true: (1)
23 defendant knowingly possessed a firearm; (2) the firearm had been
24 shipped or transported from one state to another or had been
25 shipped or transported from a foreign nation to the United
26 States; and (3) at the time defendant possessed the firearm,
27 defendant had been convicted of a crime punishable by
28 imprisonment for a term exceeding one year.

PENALTIES

5. Defendant understands that the statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 922(g)(1), is: 10 years imprisonment; a 3-year period of supervised release; a fine of \$250,000; and a mandatory special assessment of \$100.

6. Defendant understands that supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release authorized by statute for the offense that resulted in the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

7. Defendant understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. Defendant understands that once the court accepts defendant's guilty plea, it will be a federal felony for defendant to possess a firearm or ammunition. Defendant understands that the conviction in this case may also subject defendant to various other collateral consequences, including but not limited to revocation of probation, parole, or supervised release in another case and suspension or revocation of a professional license. Defendant understands that unanticipated

1 collateral consequences will not serve as grounds to withdraw
2 defendant's guilty plea.

3 8. Defendant understands that, if defendant is not a United
4 States citizen, the felony conviction in this case may subject
5 defendant to: removal, also known as deportation, which may,
6 under some circumstances, be mandatory; denial of citizenship;
7 and denial of admission to the United States in the future. The
8 court cannot, and defendant's attorney also may not be able to,
9 advise defendant fully regarding the immigration consequences of
10 the felony conviction in this case. Defendant understands that
11 unexpected immigration consequences will not serve as grounds to
12 withdraw defendant's guilty plea.

13 FACTUAL BASIS

14 9. Defendant admits that defendant is, in fact, guilty of
15 the offense to which defendant is agreeing to plead guilty.
16 Defendant and the USAO agree to the statement of facts provided
17 below and agree that this statement of facts is sufficient to
18 support a plea of guilty to the charge described in this
19 agreement and to establish the Sentencing Guidelines factors set
20 forth in paragraph 11 below but is not meant to be a complete
21 recitation of all facts relevant to the underlying criminal
22 conduct or all facts known to either party that relate to that
23 conduct.

24 On or about June 5, 2012, in Los Angeles County, within the
25 Central District of California, defendant knowingly possessed a
26 firearm, namely, an SKS rifle, bearing serial number 3179032.
27 The firearm had been shipped or transported from one state to
28 another or from a foreign nation to the United States.

1 Defendant, aided and abetted by his co-defendant, Eric Moreno
2 Navarro, sold the firearm to an undercover law enforcement agent.
3 The undercover law enforcement agent paid defendant \$340 for the
4 firearm.

5 At the time defendant knowingly possessed the firearm,
6 defendant had been convicted of the following felony crime,
7 punishable by a term of imprisonment exceeding one year:
8 Vehicular Manslaughter, in violation of California Penal Code
9 Section 192(c)(3), in the Superior Court of the State of
10 California, County of Riverside, case number RIF129332, on or
11 about October 11, 2007.

12 SENTENCING FACTORS

13 10. Defendant understands that in determining defendant's
14 sentence the Court is required to calculate the applicable
15 Sentencing Guidelines range and to consider that range, possible
16 departures under the Sentencing Guidelines, and the other
17 sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant
18 understands that the Sentencing Guidelines are advisory only,
19 that defendant cannot have any expectation of receiving a
20 sentence within the calculated Sentencing Guidelines range, and
21 that after considering the Sentencing Guidelines and the other
22 § 3553(a) factors, the Court will be free to exercise its
23 discretion to impose any sentence it finds appropriate up to the
24 maximum set by statute for the crime of conviction.

25 11. Defendant and the USAO agree to the following
26 applicable Sentencing Guidelines factor:

27 Base Offense Level : 14 [U.S.S.G. § 2K2.1(a)(6)]
28

1 Defendant and the USAO reserve the right to argue that additional
2 specific offense characteristics, adjustments, and departures
3 under the Sentencing Guidelines are appropriate. The base
4 offense level set forth above is based on information currently
5 known to the government regarding defendant's criminal history.
6 Defendant understands and agrees that defendant's base offense
7 level could be increased if defendant is an armed career criminal
8 under U.S.S.G. §§ 4B1.4 and 18 U.S.C. § 924(e), or if defendant
9 has additional prior conviction(s) for either a crime of violence
10 or a controlled substance offense under U.S.S.G. § 2K2.1. If
11 defendant's base offense level is so altered, defendant and the
12 USAO will not be bound by the base offense level agreed to above.

13 12. Defendant understands that there is no agreement as to
14 defendant's criminal history or criminal history category.

15 13. Defendant and the USAO reserve the right to argue for a
16 sentence outside the sentencing range established by the
17 Sentencing Guidelines based on the factors set forth in 18 U.S.C.
18 § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

19 WAIVER OF CONSTITUTIONAL RIGHTS

20 14. Defendant understands that by pleading guilty,
21 defendant gives up the following rights:

- 22 a) The right to persist in a plea of not guilty.
23 b) The right to a speedy and public trial by jury.
24 c) The right to be represented by counsel - and if
25 necessary have the court appoint counsel - at trial. Defendant
26 understands, however, that, defendant retains the right to be
27 represented by counsel - and if necessary have the court appoint
28 counsel - at every other stage of the proceeding.

1 d) The right to be presumed innocent and to have the
2 burden of proof placed on the government to prove defendant
3 guilty beyond a reasonable doubt.

4 e) The right to confront and cross-examine witnesses
5 against defendant.

6 f) The right to testify and to present evidence in
7 opposition to the charges, including the right to compel the
8 attendance of witnesses to testify.

9 g) The right not to be compelled to testify, and, if
10 defendant chose not to testify or present evidence, to have that
11 choice not be used against defendant.

12 h) Any and all rights to pursue any affirmative
13 defenses, Fourth Amendment or Fifth Amendment claims, and other
14 pretrial motions that have been filed or could be filed.

15 WAIVER OF APPEAL OF CONVICTION

16 15. Defendant understands that, with the exception of an
17 appeal based on a claim that defendant's guilty plea was
18 involuntary, by pleading guilty defendant is waiving and giving
19 up any right to appeal defendant's conviction on the offense to
20 which defendant is pleading guilty.

21 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

22 16. Defendant agrees that, provided the Court imposes a
23 total term of imprisonment on all counts of conviction of no more
24 than 16 months, defendant gives up the right to appeal all of the
25 following: (a) the procedures and calculations used to determine
26 and impose any portion of the sentence; (b) the term of
27 imprisonment imposed by the Court; (c) the fine imposed by the
28 court, provided it is within the statutory maximum; (d) the term

1 of probation or supervised release imposed by the Court, provided
2 it is within the statutory maximum; and (e) any of the following
3 conditions of probation or supervised release imposed by the
4 Court: the conditions set forth in General Orders 318, 01-05,
5 and/or 05-02 of this Court; the drug testing conditions mandated
6 by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug
7 use conditions authorized by 18 U.S.C. § 3563(b)(7).

8 17. The USAO agrees that, provided (a) all portions of the
9 sentence are at or below the statutory maximum specified above
10 and (b) the Court imposes a term of imprisonment of no less than
11 10 months, the USAO gives up its right to appeal any portion of
12 the sentence.

13 RESULT OF WITHDRAWAL OF GUILTY PLEA

14 18. Defendant agrees that if, after entering a guilty plea
15 pursuant to this agreement, defendant seeks to withdraw and
16 succeeds in withdrawing defendant's guilty plea on any basis
17 other than a claim and finding that entry into this plea
18 agreement was involuntary, then the USAO will be relieved of all
19 of its obligations under this agreement.

20 EFFECTIVE DATE OF AGREEMENT

21 19. This agreement is effective upon signature and
22 execution of all required certifications by defendant,
23 defendant's counsel, and an Assistant United States Attorney.

24 BREACH OF AGREEMENT

25 20. Defendant agrees that if defendant, at any time after
26 the signature of this agreement and execution of all required
27 certifications by defendant, defendant's counsel, and an
28 Assistant United States Attorney, knowingly violates or fails to

1 perform any of defendant's obligations under this agreement ("a
2 breach"), the USAO may declare this agreement breached. All of
3 defendant's obligations are material, a single breach of this
4 agreement is sufficient for the USAO to declare a breach, and
5 defendant shall not be deemed to have cured a breach without the
6 express agreement of the USAO in writing. If the USAO declares
7 this agreement breached, and the Court finds such a breach to
8 have occurred, then: (a) if defendant has previously entered a
9 guilty plea pursuant to this agreement, defendant will not be
10 able to withdraw the guilty plea, and (b) the USAO will be
11 relieved of all its obligations under this agreement.

12 COURT AND PROBATION OFFICE NOT PARTIES

13 21. Defendant understands that the Court and the United
14 States Probation Office are not parties to this agreement and
15 need not accept any of the USAO's sentencing recommendations or
16 the parties' agreements to facts or sentencing factors.

17 22. Defendant understands that both defendant and the USAO
18 are free to: (a) supplement the facts by supplying relevant
19 information to the United States Probation Office and the Court,
20 (b) correct any and all factual misstatements relating to the
21 Court's Sentencing Guidelines calculations and determination of
22 sentence, and (c) argue on appeal and collateral review that the
23 Court's Sentencing Guidelines calculations and the sentence it
24 chooses to impose are not error, although each party agrees to
25 maintain its view that the calculations in paragraph 11 are
26 consistent with the facts of this case. While this paragraph
27 permits both the USAO and defendant to submit full and complete
28 factual information to the United States Probation Office and the

1 Court, even if that factual information may be viewed as
2 inconsistent with the facts agreed to in this agreement, this
3 paragraph does not affect defendant's and the USAO's obligations
4 not to contest the facts agreed to in this agreement.

5 23. Defendant understands that even if the Court ignores
6 any sentencing recommendation, finds facts or reaches conclusions
7 different from those agreed to, and/or imposes any sentence up to
8 the maximum established by statute, defendant cannot, for that
9 reason, withdraw defendant's guilty plea, and defendant will
10 remain bound to fulfill all defendant's obligations under this
11 agreement. Defendant understands that no one -- not the
12 prosecutor, defendant's attorney, or the Court -- can make a
13 binding prediction or promise regarding the sentence defendant
14 will receive, except that it will be within the statutory
15 maximum.

16 NO ADDITIONAL AGREEMENTS

17 24. Defendant understands that, except as set forth herein,
18 there are no promises, understandings, or agreements between the
19 USAO and defendant or defendant's attorney, and that no
20 additional promise, understanding, or agreement may be entered
21 into unless in a writing signed by all parties or on the record
22 in court.

23 ///


PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

25. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.


AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

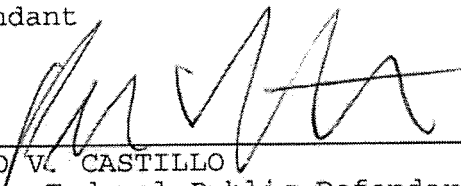
ANDRÉ BIROTTE JR.
United States Attorney


CHRISTINA T. SHAY
Assistant United States Attorney

10/22/12
Date


AURELIO PATINO
Defendant

10.19.12
Date


PEDRO V. CASTILLO
Deputy Federal Public Defender
Attorney for Defendant
AURELIO PATINO

10/19/12
Date

CERTIFICATION OF DEFENDANT

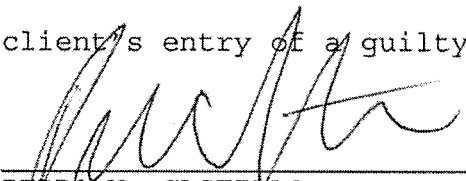
I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.


AURELIO PATINO
Defendant

10.19.12
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am Aurelio Patino's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of a guilty plea pursuant to this agreement.



PEDRO V. CASTILLO
Deputy Federal Public Defender
Attorney for Defendant
AURELIO PATINO

10/19/12
Date